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(3)

BEFORE STATE ADMINISTRATIVE TRIBUNAL AT JABALPUR

w.p. 14266/03

D.A.NO. ²⁸⁵¹ OF 1999

- 1) RAM DULARE PRAJAPATI, AGED ABOUT 36 YEARS, SON OF SHRI N.R. PRAJAPATI, OCCU: KHALASI
- 2) RANGULAL YADAV, AGED ABOUT 49 YEARS, SON OF SHRI KRIPARAM YADAV, OCCU: KHALASI
- 3) SHIV KUMAR SHUKLA, AGED ABOUT 33 YEARS, SON OF SHRI C.L. SHUKLA, OCCU: TIME KEEPER
- 4) BAHADUR RAM SAHU, AGED ABOUT 35 YEARS, OCCU: TIME KEEPER,

ALL THE APPLICANTS ARE WORKING UNDER THE ESTABLISHMENT OF ADDL. DEV. COMMISSIONER, JANPAD PANCHAYAT KOTA, DISTT: BILASPUR (M.P.)

.....APPLICANTS

- V E R S U S -

- 1) STATE OF MADHAYA PRADESH THROUGH; SECRETARY PANCHAYAT AND RURAL DEV. DEPTT., VALLABH SHAWAN, BHOPAL
- 2) DEVELOPMENT COMMISSIONER BHOPAL
- 3) COMMISSIONER BILASPUR DIVISION, DISTT: BILASPUR [M.P.]
- 4) ADDL.C.E.O., JANPAD PANCHAYAT KOTA DISTT: BIASPUR
- 5) BLOCK DEVELOPMENT OFFICER KOTA, DISTT: BILASPUR

.....RESPONDENT

DETAILS OF PETITION

1. PARTICULARS OF THE APPLICANT:

As stated above.

2. PARTICULARS OF THE RESPONDENTS:

As stated above.

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPURWrit Petition (S) No. 1861 of 2005

Petitioner : Ram Dulare Prajapati & others

Versus

Respondents : State of Madhya Pradesh & others

Post for order on th 27 February, 2007.

Sd/-
Satish K. Agnihotri
Judge

(6)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 1861 of 2005

Petitioner : Ram Dulare Prajapati & others

Versus

Respondents : State of Madhya Pradesh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri H. B. Agrawal, Senior Advocate with Shri Ajay Shrivastava, Advocate for the Petitioner.

Shri V. V. S. Moorthy, Deputy Advocate General with Miss Sunita Jain, Panel Lawyer for the respondents No. 1, 2, 3 and 5.

None for the respondent No.4.

ORDER

(Passed on this ^{*}27 day of February, 2007)

1. By this petition, the petitioners have challenged the validity of the order dated 21.7.1999 (Annexure A/8) passed by the Additional Assistant Development Commissioner, Janpad Panchayat, Kota, District- Bilaspur (Respondent No.4), whereunder the grant of regular scale to the petitioners was withdrawn and the petitioner were paid thereafter daily wages. This order reads as under:-

“ इस कार्यालय में कार्यरत निम्नांकित खलासी एवं समयपालों की सेवायें स्वीकृत पद से अधिक होने के फलस्वरूप नियमित वेतनमान से दैनिक वेतन में स्वीकार करते हुए उनकी सेवायें ग्रामीण यांत्रिकी सेवा के अंतर्गत हस्तांतरित की जाती है।”

2. The indisputable facts in nutshell, are that initially the petitioners were engaged on daily wages. The petitioner No.1 (Ram Dulare Prajapati) was initially appointed on the post of Khalasi vide order dated 25.9.1985 (Annexure A/1). The petitioner No.2 (Rangulal Yadav) was initially appointed on 18.8.1971 (Annexure A/2) on the post of Khalasi. The petitioner No.3 (Shiv Kumar Shukla) was initially

appointed on the post of Time Keeper vide order dated 1.10.1986 (Annexure A/3) for a period of 89 days, and the petitioner No. 4 (Bahadur Ram Sahu) was initially appointed on the post of Time Keeper vide order dated 2.2.1980 (Annexure A/4).

3. Thereafter, vide order dated 28.4.1993 (Annexure P/7) on completion of three years of service up to 1.1.1990, the petitioner No.1 was treated as member of the Workcharged and Contingency Temporary Service w.e.f. 1.2.1990 and he was granted regular pay scale of Rs. 750/-. The petitioner No.2 was granted regular pay scale of Rs. 725/ w.e.f. 1.1.1986 (vide service book, page 22 of the petition). Vide order dated 8.6.1997 the petitioner No.3 was treated as member of the Workcharged and Contingency Temporary Service w.e.f. 1.1.90, on completion of three years service and he was granted regular pay scale of Rs. 825/-. Vide order dated 8.6.1997 the petitioner No.4 was treated as member of the Workcharged and Contingency Temporary Service w.e.f. 1.1.1990, on completion of three years service and he was granted regular pay scale of Rs. 825/-.
4. Learned counsel appearing for the petitioner submits that accordingly the petitioners were continued in service and were getting salary in accordance with the regular pay scale granted to them. But all of a sudden, vide impugned order dated 21.7.1999 it was directed that on account of excess staff in the office, on the posts of Khalasi and Time Keeper, the services of the petitioners are transferred to the Rural Engineering Department on daily wages, whereas they were getting regular pay scale.
5. Shri H. B. Agarwal, learned Senior Advocate appearing for the petitioner with Shri Ajay Shrivastava, Advocate would contend that once a right of a particular pay scale has been granted to the petitioners in accordance with law, the same cannot be withdrawn after a period of five - six years, without affording an opportunity of

hearing. The petitioners have acquired the right to the fixed monthly pay scale as they became Workcharged and Contingency Paid Employees. Thus the impugned order is bad and deserves to be quashed.

6. Learned counsel for the petitioners heavily referred to a judgment and order dated 18th January, 2006 passed by this Court in Writ Petition No. 2125/2002 (**Sant Kumar & others Vs. State of Chhattisgarh & others**), wherein this Court while considering the identical issue of reducing the regular pay scale granted earlier, held that the order reducing the pay scale of an employee behind their back, without following any procedure known to law is punitive and visits with civil consequence. The same cannot be passed without giving concerned employee, an opportunity of hearing.
7. Learned counsel for the petitioner also submits that in **Sant Kumar's** case (supra), this Court has relied on a decision of Hon'ble Supreme Court in **Bhagwan Shukla Vs. Union of India & others** { (1994) 6 SCC 154 } wherein, while considering the reduction of pay of the employee from Rs. 190/- per month to Rs. 181/- per month the Hon'ble Supreme Court has held as under:-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

8. Learned counsel for the petitioner further submits that the respondents/State of Chhattisgarh preferred a Special Leave Petition (Civil) No. 17122/2006 (State of Chhattisgarh & others Vs. Sant Kumar & others) before the Hon'ble Supreme Court, challenging the order dated 18.1.2006 (supra), passed by this Court and the same has been dismissed by the Hon'ble Supreme Court vide order dated 9.10.2006 after condoning the delay. Shri V. V. S. Murthy, learned Deputy Advocate General appearing for the respondents/State with Miss Sunita Jain, Panel Lawyer, do not dispute the fact.
9. In view of the foregoing, I am of the considered opinion that the impugned order dated 21.7.1999 (Annexure A/8) is bad in law, being punitive in nature, without affording an opportunity of hearing to the concerned employees (petitioners) for putting forward their cases.
10. Accordingly the order dated 21.7.1999 (Annexure A/8) is quashed. The petitioners are entitled to regular pay scales from the date the same have been withdrawn by the impugned order. No order as to costs.

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Sd/-
Satish K. Agnihotri
Judge